

**TESTIMONY IN FAVOR OF HB 119
BEFORE THE HOUSE BUSINESS AND LABOR COMMITTEE
JERRY KECK, ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
JANUARY 8, 2009**

Chairman Wilson and members of the committee, my name is Jerry Keck. I am the administrator of the Employment Relations Division of the Department of Labor and Industry. First, I want to thank Rep. Hunter for agreeing to carry this bill.

The Employment Relations Division implements and administers a number of programs affecting the employer – employee relationship. One area of regulatory responsibilities is in the workers' compensation system. HB 119 is the department workers' compensation bill addressing a wide range of regulatory issues in workers' compensation that have arisen during the past biennium.

1. Section 1 (pages 1-2) allows the department to enter into agreements with tribal governments to recognize and give effect to tribal workers' compensation plans or self-insured plans that the department determines provide adequate coverage to employees.
2. Section 2 (page 2) allows a current or former self-insurer to transfer workers' compensation claim liabilities to a third party and sets out the requirements to do so.
3. Section 3 (pages 2-5) requires that upon application for a professional employer organization license, any controlling person shall submit fingerprints for the purpose of fingerprint checks by the Montana Department of Justice.
4. Section 4 (pages 6-7) requires that a written explanation is provided to the claimant describing how the claimant may appeal an insurer's denial of benefits.
5. Section 5 (pages 7-8) adds a religious corporation, organization or trust receiving remuneration for a project performed by its members to the definition of an employer.
6. Section 6 (pages 8-13) adds a member of a religious corporation, organization or trust while performing services for the entity on a project for which the entity is receiving remuneration to the definition of an employee.
7. Section 7 (pages 13-15) adds for the purpose of calculation of compensation benefits and premiums to be paid by the employer, that wages will be based upon all hours worked multiplied by the mean hourly wage for that area as published by the department in the Montana "informational wage rates by occupation".
8. Section 8 (pages 15-19) allows the assessment on Plan I, II and III insurers to be for an amount up to 3% of paid losses instead of exactly 3% as was required previously and

inserts a notification provision for the department to notify the self-insureds of the rate that will be assessed by April 30th each year.

9. Section 9 (page 19) removes claims examiners from those that can be penalized for refusal or neglecting to submit reports necessary for the proper filing and review of a claim.

10. Section 10 (page 19) of the bill you have before you we are asking to be deleted. We have an amendment that will replace that section with a fix generated by a decision of the Workers' Compensation Court last week in Shelly Weidow v. Uninsured Employers' Fund (UEF). In that case, Judge Shea found that the existing language was confusing in not clearly identifying what determination (the denial of benefits by the UEF or the mediator's report) became the agency final determination. He concluded that the language was unconstitutionally vague. We want to clarify that language.

11. Section 11 (pages 19-20) provides that claims for occupational diseases must be presented in writing, signed by the claimant or the claimant's representative.

12. Section 12 (pages 20-21) allows for voluntary mediation over disputes involving the forfeiture of attorney fees.

13. Section 13 (pages 21-25) removes the interim language made obsolete by the adoption of a hospital fee schedule, amends the source of the conversion factor information for the fee schedule from disability insurance carriers to group health insurance carriers and establishes a 1% market share requirement for those carriers used. This section also adopts certain medical fee schedule standards as adopted by the centers for medicare and medicaid services and establishes a requirement for medical bills to be paid by insurers within 30 days of receipt or interest may be charged. Also establishes a requirement for medical providers to pay back any overpayments within 30 days of a determination of the correct reimbursement amount or interest may be charged and establishes that unresolved disputes over fees for medical services may be brought to the workers' compensation court.

14. Section 14 (pages 25-26) clarifies that impairment ratings may be obtained from an evaluator who qualifies as a treating physician if the injury falls within the scope of the treating physician's practice.

15. Section 15 (pages 26-27) removes the limitation on the number of weeks that temporary partial disability benefits may be paid.

16. Section 16 (pages 27-28) allows for an insurer to authorize up to a 90-day supply of medications from an in-state mail service pharmacy.

17. Section 17 (pages 28-29) amends the reference section to reflect the changes made in section 13

18. Section 18 (page 29) removes the requirement that applicants for the subsequent injury fund apply before employment or within 60 days of becoming employed and upon approval amends the effective date of the certification to the date the application was received.

19. Section 19 (pages 29-32) of the bill would allow the department to defer the assessment for the subsequent injury fund to a subsequent year when the balance to be assessed is less than \$1,000,000

20. Section 20 (pages 32-33) would assess a penalty on the State Fund of up to \$200 for each policy cancellation that is not reported to the department in a timely manner.

21. Section 21 (page 33) fixes a codification error from the last session.

22. Section 22s through 25 (pages 33-34) provide for notification to tribal governments, codification instructions, a saving clause, and the effective dates of the bill.

Mr. Chairman and members of the committee, the department is requesting your support for HB 119. I will try to answer any questions that you may have. Thank you.

Amendments to House Bill No. 119
1st Reading Copy

Requested by Representative Chuck Hunter

For the House Business and Labor Committee

Prepared by Bartley Campbell
January 7, 2009 (2:57pm)

1. Title, line 12.

Following: "LOSSES;"

Strike: "REVISING THE DEFINITION OF "UNINSURED EMPLOYER";"

Insert: "CLARIFYING THAT THE TIME TO APPEAL TO MEDIATION IS FROM
THE DATE OF DETERMINATION BY THE DEPARTMENT;"

2. Title, line 19.

Following: "39-71-307,"

Strike: "39-71-501,"

Insert: "39-71-520,"

3. Page 1, line 26.

Following: "recognize"

Strike: "and give effect to"

Insert: ", with the same effect as the exclusive remedy and
benefits under plans No. 1, 2, and 3,"

4. Page 19, line 15 through line 27.

Strike: Section 10 in its entirety

Insert: "Section 10. Section 39-71-520, MCA, is amended to read:
"39-71-520. Time limit to appeal to mediation --

petitioning workers' compensation court -- failure to settle or
petition. (1) A dispute concerning uninsured employers' fund
benefits must be appealed to mediation within 90 days from the
date of the determination by the department or ~~the date that the~~
determination is considered final.

(2) (a) If the parties fail to reach a settlement through
the mediation process, any party may file a petition before the
workers' compensation court.

(b) A party's petition must be filed within 60 days of the
mailing of the mediator's report provided for in 39-71-2411
unless the parties stipulate in writing to a longer time period
for filing the petition.

(c) If a settlement is not reached through mediation and a
petition is not filed within 60 days of the mailing of the
mediator's report, the determination by the department is final."

{ Internal References to 39-71-520:

39-71-501 x 39-71-517 x 39-71-519 x } "

5. Page 24, line 19.

Following: "shall"

Strike: "within 30 days of receipt make payments, at the fee
schedule rate,"

Insert: "make payments at the fee schedule rate within 30 days
of receipt"

6. Page 24, line 20 through line 21.

Following: "no" on line 20

Strike: "dispute" on line 20 through "condition." on line 21

Insert: "other disputes exist. Disputes must be defined by the
department by rule."

7. Page 24, line 24.

Following: "of"

Insert: "receipt of"

8. Page 24, line 28.

Following: "date of"

Insert: "receipt of"

- END -